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Joint written statement* submitted by the Europe-Third World Centre (CETIM), a non-governmental organization in General consultative status, Environmental Rights Action / Friends of the Earth Nigeria (ERA/FoEN), a non-governmental organization in Special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Cases of Environmental Human Rights Violations

by Shell in Nigeria's Niger Delta

Introduction

Since 1956 when oil production in commercial quantities began in Nigeria's Niger Delta, the Delta communities have known no rest. For more than five decades oil has been Nigeria's leading export product. Nearly one-half of that oil production has been carried out under Shell's supervision. There has been massive environmental degradation from frequent oil spills and gas flaring resulting in declining fish catch and poor crop yields and impoverishment. Community protests since the late 1980s have been met with oppression and repression by the armed forces backed by the oil company Shell. There has been impunity for those guilty of human rights violations and of failing to adhere to environmental standards, making it imperative to set global standards and enforcement mechanisms to control oil companies. Some of the many instances of environmental and social dislocations leading to human rights violations are presented below.

Gas flaring

Gas flaring has continued unabated. In Nigeria, Shell keeps almost 100 gas flares burning, day and night. Together, these gas flares produce as much CO2 as two million cars. But this gas could be used for other purposes, such as electricity generation. The once fertile wetlands of the Niger Delta have been transformed by the oil leaks into the world's largest oil disaster. Even during the colonial era, the British government was aware of the undesirability of the situation but took no action[1].

Several studies point to the devastating effects of gas flaring on people and the environment. According to a recent report (2011), gas flaring has had known effects on the Ogoni people and their environment. For example, noise pollution, itching and skin rashes, the discomfort generated by the light from 24/7, flaring, the black dust and soot that settle in people's homes and on food and clothes undermine the quality of life and the right of the people to live in a healthy environment in which to fulfil their potential.[2]

Regarding health, gas flaring causes acid rain, which acidifies the lakes and streams and damages crops and vegetation. It leads to corrosion of roofs. It is a known carcinogen which has affected human health, including causing miscarriages and congenital malformations, increasing the frequency of respiratory illnesses and cancer, amongst other ailments that have sent hundreds to an early grave. Its sulphur leads to low farm yields, affecting the farming livelihood of the people.[3]

Gas flaring has been prohibited in Nigeria since 1984 when a law on gas re-injection came into effect. Since then, oil companies have been prohibited from engaging in routine gas flaring and can flare only with a special permit from the responsible minister. However, the requirements for this special permit are unknown. Shell's flaring permit has not been made public, so it is impossible for local people to determine the grounds on which it was granted. Moreover, the fine for flaring gas is too low per cubic metre to act as a deterrent for oil companies.

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[1] See the report "Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity" (2005), by Environmental Rights Action/Friends of the Earth Nigeria, and Climate Justice , Amsterdam.

[2] See a report by Desmond Utomwen (2011) "Doubt Still Over Gas Flaring" , The News Magazine, April. See also report by Amnesty International (2009) Nigeria: Petroleum, Pollution and Poverty in the Niger Delta, London.

[3] Community folks also says that some yams harvested and fish caught demonstrate a loss of taste because of the oil spill contamination.

Shell has promised to extinguish the flares as a result of pressure from the Nigerian people, government and environmental organisations. But Shell has not yet kept these promises, exerting its political and economic influence on the national government so that it acquiesce in shifting the goal posts[4].
In reality, and according to a UNEP report (2011), Shell is not observing its own internal regulations nor national regulations, and this makes imperative an international binding mechanism.

A campaign to end gas flaring, led by Environmental Rights Action/Friends of the Earth (ERA/FoE), has been internationalized, culminating in a national court case brought by a coalition of international and local NGOs and the Iwherekan community against Shell as a test case.[5] The Federal High Court sitting in Benin City on 14 November 2005 ordered a stop to gas flaring, declaring it a "gross violation of the fundamental human rights to life and dignity, which include the right to a clean, poison-free, pollution-free healthy environment".[6]

Shell has displayed a total disregard for the Nigerian justice system, and no detailed phase-out scheme has ever been submitted. In spite of the long-standing laws against gas flaring in Nigeria, and because of shifting deadlines to end the practice, the activity continues, with serious health consequences for people living nearby, hence the need for a higher order to restrain Shell and compel it to end gas flaring.

Oil spills
More than 60% of people in the region depend on the natural environment of the Niger Delta for their livelihood. Shell's environmentally destructive practices in these communities have severely affected the people, for oil spills have destroyed farmland and fish ponds and polluted sources of drinking water.

Between 2004 and 2007, oil spills from Shell destroyed fish ponds and farmlands in the Bodo and Goi communities. In 2004, there was a major oil spill from the Trans-Niger pipeline, which runs through Ogoniland to the Bonny Export Terminal. Chief Barizaa Dooh, one of the plaintiffs in the case, had fish-ponds, a poultry coop and a bakery. The oil spill destroyed all his fish-ponds as well as other agricultural lands. The oil spills and fires have made the community rendered completely uninhabitable.[7] In 2005, the Oruma community in Bayelsa State suffered an oil spill from Shell's facility, which destroyed fish-ponds, farms and trees, losing their sources of livelihood. In the 2007 Ikot Ada oil spill case, the community suffered from pollution of their farmlands, ponds and community lands.

ERA/FoEN and its sister organization Milieudefensie based in the Netherlands took Shell to court in The Hague, to seek environmental clean up and compensation for the victims' loss of livelihood, including destruction of farmlands and fish-ponds in the Goi, Oruma and Ikot Ada Udo communities.

The Dutch court ruled that Shell and its subsidiary, SPDC, were not responsible for the spills that occurred at Oruma, Goi and Ikot Ada Udo between 2004 and 2007. SPDC was, however, held liable for not doing enough to prevent the

[4]In 1996 Shell promised it would stop flaring in 2008. In 2000 a new deadline was announced for 2004 as the flare out deadline In 2000 the Nigerian Minister of Environment stated that an agreement had been reached with the oil sector to end flaring in 2004. In 2002, Shell stated that everything would work out and that the flames would be extinguished in 2008. But in 2003, Shell repudiated its commitment to 2008. Other agreed deadlines were 2009, 2010, and 2013, making it clear that the company is out to buy time rather than to end gas flaring. Shell engaged in bulk passing and blamed its partners in the joint venture, who refused to co-finance investments for improvements, as well as on local people and insecurity as the Niger delta has become militarised.
[5] The government's inability to completely halt gas flaring in the country prompted the Iwherekan community in Delta State to sue *Shell Petroleum Development Company of Nigeria Limited (SPDC)* for its continued flaring of gas.
[6]See the Federal High Court of Nigeria Benin Judicial Division judgment in the case Between Mr. Jonah Gbemre and Shell Petroleum Development Company Nigeria Ltd, Nigeria National Petroleum Corporation, Attorney general of the Federation, in suit No: fhc/b/cs/53/05 (Judgment of 14 November, 2005). Available at http://www.climatelaw.org/cases/case-documents/nigeria/ni-pleadings.doc
[7] Although the former residents of Goi now live scattered among neighbouring communities in the area, which are less damaged, they still meet in their town hall by the waterside as often as possible to stay united and rekindle the hope of living together in the near future.

sabotage that resulted in the oil spill. The court ruled that in the case of the oil spill at Ikot Ada Udo, SPDC could have prevented the sabotage by plugging the well at an earlier stage.[8]

The case is now being appealed, to compel Shell to pay compensation, but the company continues to escape from justice because of technicalities rather than the substance of the case. Clearly, the rights of the fishers have been violated, for the entire Goi community has had to vacate its ancestral home and the Goi acid lake that Shell left behind in the community river and floodplains.

UNEP Report on Ogoniland

The Ogoni are a closeknit minority tribe of farmers and fishers in Rivers State in Southern Nigeria. Their territory, Ogoniland, was once considered the bread basket of Rivers State.[9] As environmental degradation became more and more widespread, in 1990, the Ogoni, through their representative organisation, the Movement for the Survival of the Ogoni People (MOSOP), embarked on a peaceful campaign to stop Shell's devastation of their natural environment. The Ogoni gained international attention after a massive public protest against Shell Oil led by the MOSOP, which demanded that oil companies and the government clean up the environment and pay adequate compensation and royalties to the oil-producing regions.

The case of environmental degradation, community protests and state murder of activists with Shell's complicity are well known.[10]

The report on the pollution of Ogoniland prepared by the United Nations Environment Program (UNEP), released on 4 August 2011, unequivocally shows that the MOSOP under the prescient leadership of Ken Saro-Wiwa was not crying wolf when it maintained that grave injustice and human rights violations had indeed been inflicted on Ogoni. The UNEP assessment presented to President Goodluck Jonathan showed hydrocarbon pollution in surface water throughout the creeks of Ogoniland up to 8 cm and in groundwater that feeds drinking wells at 41 sites, including a serious case at Nisisioken Ogale in Eleme, Rivers State. Soils were found to have been polluted with hydrocarbons up to a depth of five metres in 49 observed sites, while benzene, a known carcinogen, was found in drinking water at a level 900 times above World Health Organization (WHO) acceptable levels. The report also documented that fisheries have been destroyed and that wetlands around Ogoniland are highly degraded and facing extinction. Combined, these have led to irreparable loss of livelihoods and will take at least 30 years to remedy.[11] In January 1997, over 80,000 Ogonis celebrated Ogoni Day in spite of the increased repression. Four people received gun shot wounds whilst 20 people were arrested, tortured and detained. According to the MOSOP: "In recent months since the anniversary of the judicial murder of the late Ogoni leader Ken Saro-Wiwa and eight others, a frightening wave of state terrorism has been unleashed on the area with the deployment of over 2,000 armed soldiers. ... the Ogoni stand on the threshold of complete extinction"[12]. The World Council of Churches issued a report confirming the dire situation in the delta: "A quiet state of siege prevails even today in Ogoniland. Intimidation, rape, arrests, torture, shooting and looting by the soldiers continue to occur.[13]

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[8]The claim of sabotage by Shell and upheld by the court is highly held circumspect by the victims especially spills occurring from corrosive pipelines that are more than 35 years old. Shell fails to conduct pipeline integrity tests and to change them but has chosen to criminalise the people to avoid liability.

[9]I. Okonta, I and O. Douglas, *Where Vultures Feast: Forty Years of Shell in the Niger Delta*, Published by ERA/ FoEN (2001), p. 99.

[10]In 1993, the MOSOP declared Shell persona non grata and expelled it from the Ogoni oilfields. Gross human rights violations followed as hundreds of Ogonis were hunted down and killed while hundreds more fled the country and went into exile in the United States, the United Kingdom, South Africa, Ghana, and the Republic of Benin. On 10 November 1995, the environmentalist and author Ken Saro-Wiwa and eight others were put to death on orders from the Nigerian military regime in collusion with the transnational oil corporations after a military tribunal had convicted them on trumped up charges of murder at a trial that garnered international condemnation. Shell supported the repression of Ogoni activists by arming and financing soldiers who occupied Ogoniland between 1993 to 2000. A new wave of insecurity has led to the militarization of Ogoniland till the present.

[11] UNEP Environmental Assessment Report: *On Ogoniland; One Year of Inaction*; ERA/ FoEN Newsletter,July 2012

[12] MOSOP UK (1997), Ogoni Must survive, Press Release, January 4. In: "All for Shell , A Brief history of the struggle for justice in the Niger Delta, 1997, by project Underground.

[13]World Council of Churches (1997) Ogoni- the struggle continues: WCC Report, Switzerland, January 3.

That Shell and the Nigerian government failed to implement the recommendations of the UNEP is even more disturbing and bespeaks high level impunity. The UNEP had recommended an initial clean up and restoration fund of US$ 1 billion, and establishment of a medical health complex, as well as distribution of relief materials and warning signposts erected on acid lakes that are currently used as swiming pools by Ogoni childrem. To date, virtually nothing has been done to restore the enviornment or heal the wounds of injustice and human rights violations.

Shell Bonga Spill

The Shell Bonga oil spill emanated from a Shell facility on 20 December 2011, during which 40,000 barrels of crude oil spilled into the Atlantic Ocean affecting the fishers whose source of livelihood is the ocean waters. The announcement by the National Oil Spill Detection and Response Agency (NOSDRA), ordering the fishers out of the waters, led to a suspension of their activities. Compliance with the stay away directive by the NOSDRA from 22 December 2011 to 23 April 2012 caused hardship and loss of income for some 30,000 fishers across the five states of the Niger delta.

The communities alleged that harmful chemical dispersants such as Slickgone NS, Corexit 9500 and 9527 and Biosolve, among others, which Shell Nigeria Exploration and Production Company Limited used to breakdown and disperse the spilled crude oil of 20 December 2011 at Bonga field, in turn spread to the fishing areas, where they became the causes of the diseases afterward prevalent in the communities.

Common ailments affecting the communities included mental disorders; hypertension; eye irritations; nose, throat and skin lesions; vomiting and rectal bleeding; liver and kidney damage; short-term memory loss and confusion; respiratory problems; miscarriages; blood in urine.

Following this Bonga oil spill, the NOSDRA imposed a US$ 5 billion fine on the Shell Petroleum Development Company.[14] The Nigerian Maritime Administration and Safety Agency (NIMASA) Director General, Patrick Akpobolokemi had earlier said at a public hearing organized by the House of Representatives Committee on Environment that the maritime agency calculated a total of $6.5 billion as compensation to be paid to the communities affected by the spill as damages. [15]

Conclusion

International and local advocacy as well as national regulatory agencies have not been able to compel Shell to change and to respect human rights in the Niger delta in any of these cases. None has been resolved in favor of the communities nor has any remedy been implemented. Shell refuses to respect the regulatory agencies, national governments and the laws of the land, making it look as if the regulated have become the regulator. This level of impunity demonstrates the dire need for an international mechanism to hold companies to account uniformly rather than allowing for voluntary company mechanisms that are not legally binding.

The binding mechanism should be made uniformly applicable on a global scale. The treaty should involve preventive measures covering environmental and human rights violations rather than the current ineffective manipulative compensation regime. Prior and informed consent must be a condition to negotiate with the communities.

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[14]See "A commentary on the $5 billion Fine imposed on Shell Nigeria Exploration and Production Company by NOSDRA", available at: Community. Vanguardngr.com/forum/topics/a-commentary-on-the-5-billion-imposed-on-snepco-by-nosdra.

[15]Ibid. The NIMASA director said: "The kind of impunity Shell and its allies have demonstrated so far in the Niger Delta area must stop if the future of the people of Nigeria and the environment are to be protected. … And in other climes when spills like this occur, the first thing is remediation, attention to the affected communities and finding ways of reducing the sufferings of the people and restoring the eco-system, but Shell fell short of all these criteria and of course it is sad that it is only in Nigeria that we can witness this degree of impunity. In NIMASA, we see this as a serious infraction of our laws; the damage done to the communities and the eco-system can be seen as genocide."